

PT 97-16

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OLIVET NAZARENE UNIVERSITY)		
Applicant)		
)	Docket #	94-46-3
v.)		
)	Parcel Index #	09-20-307-004-0040
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Brenda Gorski, Assistant State's Attorney of Kankakee County appeared on behalf of the Kankakee County Board of Review.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on May 10, 1996, to determine whether or not Kankakee County Parcel No. 09-20-307-004-0040 and the residence located thereon should be exempt from real estate taxation for the 1994 assessment year.

Ms. Dianne Schaafsma, internal auditor for Olivet Nazarene University (hereinafter referred to as the "Applicant"), was present and testified on behalf of the applicant.

The issues in this matter include whether the applicant owned this parcel and the residence located thereon during the 1994 assessment year. The next issue is whether the applicant is either a

school or a religious organization within the purview of the Property Tax Code. The final issue is whether this parcel and the residence thereon were used primarily for either school or religious purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that this parcel and the residence thereon were owned by the applicant during the 1994 assessment year. It is also determined that the applicant is primarily a school and not primarily a religious organization. Finally, it is determined that this parcel and the residence thereon were not used by the applicant for primarily school purposes and also were not used for primarily religious purposes during the 1994 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption during the 1994 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. The applicant acquired the parcel here in issue by a warranty deed dated July 3, 1945. (Dept. Ex. No. 1C)

3. The purpose clause of the applicant, as amended, reads in part as follows:

The object for which the corporation is formed is to encourage, promote, maintain and support an institution of postsecondary education offering courses of instruction leading to appropriate associate, baccalaureate and graduate degrees: such courses of instruction to be developed from a base in the liberal arts and sciences and a Christian holiness

view; also such laboratory schools as shall be necessary to provide practice in professional programs.

4. The applicant is a four year undergraduate institution offering a liberal arts program leading to degrees in 20 to 30 fields of study. The applicant also offers graduate degrees in religion, pastoral counseling, and business administration. (Tr. pp. 9 & 10)

5. The applicant is accredited by the North Central Association of Colleges and Schools. (Tr. p. 10)

6. During 1994, the residence located on this parcel, known as the "Mary Scott Missionary House" was used to house missionaries and their families, while on furlough. (Dept. Ex. No. 3A)

7. Tim and Mary Mercer lived in the residence on this parcel during the period January 1, 1994, through June 18, 1994, and Allen Wilson lived in this residence during the period June 26, 1994, through December 31, 1994. Both Tim and Allen are commissioned missionaries in the Church of the Nazarene. (Tr. p. 10)

8. The missionaries interact with the students, occasionally speak to classes and attend convocations during the week. On weekends they speak in various area Churches of the Nazarine. (Tr. p. 11, & Dept. Ex. No. 1E)

9. No job description or contract of employment with the applicant was offered concerning these missionaries. In addition, there was no testimony that these missionaries were employed by the applicant during the period that they and their families resided in the house on this parcel.

10. While the applicant did not charge rent to the missionaries who resided in this house, the missionaries did reimburse the

applicant for the utility bills concerning this house. (After filed letter to the ALJ dated 5/23/96)

11. Based on the foregoing, I find that the residents of the house on this parcel were commissioned missionaries of the Church of the Nazarine during 1994.

12. I also find that no evidence was offered that these missionaries were employees of the applicant during the portion of 1994 when they resided in the house on this parcel.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination

requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 **ILCS** 200/15-35 provides in part as follows:

...all property of schools, not sold or leased or otherwise used with a view to profit, is exempt,....
Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including but not limited to,...staff housing facilities,....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The purposes of the applicant as stated in its Articles of Incorporation and set forth in the findings of fact, clearly

establish that the applicant was organized primarily for school purposes. The Illinois Courts have concluded that the character and purpose for which a corporation is organized must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922) and Rotary International v. Paschen, 14 Ill.2d 480 (1958). I therefore conclude that the applicant was organized for primarily school purposes.

The leading case concerning the criteria for exempting residential school property is the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967). In that case the college sought the exemption of eight residential dwellings and an eight-unit apartment building, all owned by the college and occupied by college faculty and staff. The Supreme Court in that case stated as follows:

Section 3 of article 1X of the constitution, by designating the classes of property which may be exempted from taxation, has placed a restriction on the legislature's authority to exempt. (*Locust Grove Cemetery Ass'n v. Rose*, 16 Ill.2d 132) To be exempted school property must be used exclusively for school purposes. The legislature could not declare school property used for staff housing *ipso facto* property used exclusively for school purposes and therefore tax exempt. It is the province of the courts, and not the legislature, to ascertain whether particular property, including property used as a school's staff housing facility, is 'used exclusively for school purposes' within the constitutional intentment.

The reference to Section 3 of article 1X in the above paragraph is to the Illinois Constitution of 1870 which exempts certain property in part as follows:

...and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law.

The relevant portion of Article 9, Section 6, of the Illinois Constitution of 1970, reads in part as follows:

The General Assembly by law may exempt from taxation...property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

While the language of the 1970 Constitution is somewhat different than the language of the 1870 Constitutional provision cited in the MacMurray College case, the intent that property must be used for school purposes to qualify for exemption, is still the same.

The Court then, after determining that it was its duty to construe acts of the legislature so as to uphold their constitutionality, if that can reasonably be done, stated as follows:

The record does not show that any of the faculty or staff members of either college were required, because of their educational duties, to live in these residences, or that they were required to or did perform any of their professional duties there.

Clearly, the faculty and staff members in the MacMurray case were employees of the college, which has not been established to be the case here. In addition, the employees in MacMurray were required to meet certain additional tests set forth in the above quotation.

It is also clear that under the religious exemption statute, to qualify for exemption, the occupant of a church or denomination owned residence must be an employee of that church or denomination. The cases interpreting the so called "parsonage exemption" also require that the resident be an employee of the church or other religious organization. McKenzie v. Johnson, 98 Ill.2d 87 (1983).

In fact there is even a case concerning missionaries on furlough which requires the residents of an apartment building to be employees

of the property owning religious agency. Evangelical Alliance Mission v. Department of Revenue, 164 Ill.App.3d 431 (2nd Dist. 1987).

Since the applicant failed to present any documentary evidence or testimony which would tend to establish that the residents of the house on this parcel were employees of the applicant, I conclude that the applicant has failed to establish that this parcel and the residence thereon qualified for exemption during the 1994 assessment year.

I therefore recommend that Kankakee County Parcel No. 09-20-307-004-0040 remain on the tax rolls and be assessed to the applicant for the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
May 6, 1997